

OGC 82-07264  
3 June 1982

MEMORANDUM FOR: Chief, SIS/SS

FROM: [REDACTED]

Office of General Counsel

SUBJECT: Pay Cap Ceiling for SIS-1 and SIS-2

1. This is in response to your request that this Office consider two questions: (a) whether the 9.6% Interim Overseas Differential, effective 12 July 1981, counts against the general 'pay cap' on SIS pay; and (b) whether the cap on SIS-1 and SIS-2 pay may be raised from \$57,500 to \$58,500.

2. I have reviewed the pertinent background material on the effort to initiate the IOD and its subsequent implementation. It seems quite clear that the IOD, despite its name, was presented to Congress and put into effect as a 'pay' item, as opposed to a "true" overseas differential or allowance, for pay cap purposes. There is simply no question that the IOD is subject to the general Executive Branch pay cap. See, e.g., [REDACTED] Interim Overseas Differential (21 July 1981). You may also wish to direct [REDACTED] attention to paragraph 2 of its own Reference C, Director 986962, which expressly states that the IOD is subject to the pay cap.

3. With respect to your second question, all concerned parties should be aware that the raise in the cap on SES and SFS to \$58,500 is not necessarily of any legal force in determining the proper cap on SIS-1 and SIS-2 salaries: the SIS is not the SES or SFS, but a legally distinct and independent personnel system. In other words, the assumption in paragraph 3 of [REDACTED] cable is not necessarily accurate. Whether the pay of SIS-1 and SIS-2 employees should be capped at \$57,500 or \$58,500 turns entirely and simply on whether the salary or pay for those positions prior to the latest elevation of the cap corresponded to the rate of basic pay for level IV or level V of the Executive Schedule under 5 U.S.C. § 5315. As far as I can tell, the pre-1982 salaries for SIS-1 and SIS-2 positions would have corresponded more closely to level V of the Executive Schedule and hence would now be capped at \$57,500, not \$58,500.